IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 9643 of 1996

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

VAGHELA JAYANTIBHAI VALABHAI

Versus

STATE OF GUJARAT

Appearance:

MR VH DESAI for Petitioners

M/S PATEL ADVOCATES for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2

RULE SERVED for Respondent No. 3

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 27/04/2000

ORAL JUDGEMENT

Learned Advocate Mr. V.H.Desai is appearing on behalf of petitioner. Learned A.G.P. Mr. V.B.Gharaniya

is appearing on behalf of respondents. In the present petition, the order passed by Assistant Commissioner of Labour, Mahesana dated 9th July, 1996 is challenged wherein, it is decided that industrial dispute raised by the petitioner challenging the termination order dated 31st July, 1995 by filing complaint under Section 2 A of the Industrial Disputes Act has not been referred for adjudication on the ground that respondent No.2 is governed by Bombay Civil Service Rules and therefore, provisions of Industrial Disputes Act,1947 are not applicable. The said reason is apparently erroneous and contrary to the scheme of Industrial Disputes Act,1947 because the petitioner was working as a daily rated sweeper from 9th August,1991 by periodical appointment up to 31st July, 1995. Therefore, the petitioner who was not a regularly selected employee, by respondent No.2 and petitioner was not governed under rules of Bombay Civil Service Rules as he was paid monthly Rs.400/- as an ad-hoc amount and therefore, the petitioner who was a workman within a meaning of Section 2(s) of Industrial Disputes act and as held by Apex Court in reported decision 1997 (11) S.C.C. page-396,. the daily rated employees are covered within a definition of workman and therefore, Bombay Civil Service Rules is not applicable to the petitioner which aspect has not been considered by the Assistant Commissioner of Labour, Mahesana though respondent no.2 institution may be governed by Bombay Civil Service Rules but, if petitioner is not governed under Bombay Civil Service Rules then certainly provisions of Industrial Disputes Act,1947 is applicable to the workman and respondent No.2 institution is also covered as a industry within meaning of 2 (j) of Industrial Disputes Act,1947 as held by Apex Court in case of Bangalore Water Supply reported in 1978(1) L.L.J. page 349. Therefore, the reason given by Assistant Commissioner of Labour for not referring the Industrial Dispute raised against the termination of petitioner is absolutely perverse and contrary to the provisions of Industrial Disputes Act. Therefore, the said order dated 9th July, 1996 Annexure B page-15 passed by Assistant Commissioner of Labour, Mahesana is required to be quashed and set aside and therefore, said order is hereby quashed and set aside. Therefore, it is directed to the respondent No.3 Assistant Commissioner of Labour, Mahesana to refer the Industrial Dispute raised by the petitioner against the termination order dated 31st July, 1995 to the Labour Court while exercising the power under Section 10 (1) of the Industrial Disputes Act within a period of one month from the date of receiving the writ of this order from this Court. Therefore, the present petition is allowed. Rule made absolute. No order as to

costs. Office is directed to sent immediately the writ of this order to the respondent No.3, Assistant Commissioner of Labour, Mahesana.

(H.K.RATHOD,J)

yhd